

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LAURA KIRBY

Claimant

VS.

U.S.D. #233

Self-Insured Respondent

Docket No. **1,029,984**

ORDER

The self-insured respondent requests review of the June 6, 2007 Order entered by Administrative Law Judge Steven J. Howard. The case has been placed on the summary docket for disposition without oral argument.

ISSUES

The Administrative Law Judge (ALJ) denied respondent's motion for an extension of the respondent's terminal date. The respondent requests review of whether the ALJ erred in denying extension of respondent's terminal date. Claimant argues the appeal should be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

At the regular hearing, respondent's terminal date was set for May 28, 2007. The respondent's motion to extend terminal dates was filed on May 29, 2007, in order to take Dr. Stechschulte's deposition which had previously been scheduled for May 25, 2007.

The motion hearing was held on June 5, 2007. Respondent had scheduled Dr. Stechschulte's deposition for May 25, 2007. Dr. Stechschulte's office required a \$2,000 prepayment before the deposition was to be taken. As the doctor had not received prepayment a week before the scheduled deposition his office contacted respondent's attorney's office and cancelled the deposition because prepayment had not been received.

The check for prepayment was issued on May 30, 2007, but had not yet been received by Dr. Stechschulte's office as of the date of the motion hearing and a new

deposition date had not been scheduled. Upon the doctor's receipt of prepayment respondent argued the deposition would be promptly rescheduled.¹

THE COURT: Okay. What's the circumstance? Why didn't he get the prepayment, the \$2,000?

MR. KENNYHERTZ: Well, the way I understand it is the adjustor had not written the check for -- it's a bit different than we usually deal with and had not written the check for \$2,000 or issued the check for \$2,000 prior to the deposition, which is required by Dr. Stechschulte.

That problem has been rectified and the check has been issued, and we'll set it as soon as we possibly can, get it taken and submitted.

MR. WALLACE: Judge, I'm opposing it simply because this was set for May 25th at 7 o'clock. It was set in an abundant amount of time. They knew the requirements of prepayment. I appeared for the deposition May 25th at 7 o'clock. I was not informed that it had been canceled the week prior. I just think this thing could have been taken care of in a timely fashion. I know they had a consultation with Dr. Stechschulte and he wanted prepayment and the respondent didn't want to prepay for the consultation. That was the reason they ended up having to take his deposition. So I'm opposed to it.

THE COURT: What do you mean it was canceled one week earlier? Did you appear on 5/25?

MR. WALLACE: I appeared on 5/25. It's my understanding that because -- from talking to Mr. McCurdy, he indicated to me that Dr. Stechschulte required prepayment at least a week in advance and it wasn't paid, and Dr. Stechschulte's office contacted them on the 18th and said the deposition was canceled because they had not received prepayment.

THE COURT: And so respondent is telling us now you can't even schedule it because he doesn't have the prepayment; correct?

MR. KENNYHERTZ: That's correct.²

The ALJ determined "Motion by Respondent/Insurance Carrier to extend terminal date: Denied, no good cause was shown."

The initial issue that the Board must address in this case is whether the Board has jurisdiction to review the ALJ's Order which denied respondent's request to extend its

¹ Dr. Stechschulte's deposition was taken on June 29, 2007.

² M.H. Trans. at 5-6.

terminal date. The Board finds and concludes that it does not have jurisdiction to review this particular issue at this juncture of the proceedings.

The ALJ's decision to extend terminal dates is interlocutory in nature and made during the litigation of a workers compensation case that is before the ALJ. This is neither a final order that can be reviewed pursuant to K.S.A. 44-551 nor an order entered pursuant to the preliminary hearing statute, K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing of medical treatment and payment of temporary total disability compensation. The Order now before the Board pertains to an interlocutory matter, over which an ALJ, pursuant to K.S.A. 44-523(c) has authority to decide during the litigation of a workers compensation case. Consequently, the Board lacks jurisdiction to review such an order until it is contained in a final order or award.

WHEREFORE, it is the finding of the Board that respondent's appeal from the Order of Administrative Law Judge Steven J. Howard dated June 6, 2007, should be and is hereby dismissed.

IT IS SO ORDERED.

Dated this _____ day of September 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael R. Wallace, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent
Steven J. Howard, Administrative Law Judge